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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 13, 1999

APPLICATION OF

VPS COMMUNICATIONS, INC.

CASE NO. PUC990078

For a certificate of public
convenience and necessity to
provide local exchange
telecommunications services

FINAL ORDER

On April 29, 1999, VPS Communications, Inc. ("VPSC" or "the Company"), filed an application for a certificate of public convenience and necessity ("certificate") to provide local exchange telecommunications services throughout the Commonwealth of Virginia. By Order dated May 18, 1999, the Commission directed the Company to provide notice to the public of its application, directed the Commission Staff to conduct an investigation and file a report, and scheduled a public hearing to receive evidence relevant to such application.

On July 7, 1999, Cavalier Telephone, LLC ("Cavalier"), filed its written comments in opposition to the application. Cavalier opposes granting a certificate to VPSC as being contrary to the public interest. Cavalier bases its opposition primarily upon its complaint against the corporate parent of VPSC, Virginia Electric and Power Company ("Virginia Power"),

regarding the terms and conditions upon which attachments may be made to Virginia Power's poles by Cavalier and other competitive local exchange carriers ("CLECs") and the potential for discriminatory preference being given to Virginia Power's subsidiary, VPSC.

On July 22, 1999, Staff filed its report finding that VPSC's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service, as codified in 20 VAC 5-400-180. The Staff recommended granting a local exchange certificate to VPSC, subject to certain conditions discussed below.

A hearing was conducted on July 13, 1999. VPSC filed proof of publication and proof of service as required by the May 18, 1999, Order. At the hearing, the application, the Company's exhibits, and the Staff Report were entered into the record without objection. While no testimony was adduced at hearing, counsel for VPSC and the Staff responded to questions from the Commissioners concerning a pole attachment agreement executed between VPSC and Virginia Power in July of 1998.

The Staff Report addressed Cavalier's comments concerning the possibility that VPSC's entry into the local exchange market might disadvantage other CLECs. The Staff Report recognized that the affiliate transaction involving the pole attachment agreement could disadvantage other CLECs, in violation of § 56-

265.4:4.C.1(ii) of the Code of Virginia. It is Staff's view that any concerns about preferential treatment to VPSC may be considered in the context of a filing of the pole attachment agreement under the Public Utilities Affiliates Act. The Staff has, therefore, recommended that any pole attachment agreement(s) between Virginia Power and VPSC should be filed for approval, pursuant to Chapter 4 of Title 56 of the Code of Virginia. VPSC has agreed to this recommendation, indicating that Virginia Power will make its filing by September 17, 1999.¹

The Commission accepts the recommendation of Staff that VPSC's application should be approved, subject to the requirement that any and all pole attachment agreements between Virginia Power and VPSC must be filed pursuant to Chapter 4 of Title 56 of the Code of Virginia in a separately docketed case for this Commission's review and/or approval. The Commission reserves judgment until the separately docketed proceeding on whether the subject pole attachment agreement has been filed in compliance with Chapter 4 of Title 56 of the Code of Virginia and whether there are any violations of the Public Utilities Affiliates Act occasioned by the pole attachment agreement.

The Commission also accepts Staff's second condition for approval, agreed to by VPSC, that VPSC be required to file its

¹ VPSC reserves the right to argue that the Commission's approval is no longer required, under the Order of August 8, 1997, in Case No. PUC960136.

own annual financial statements with the Commission's Division of Economics and Finance.

Based upon the record of the hearing, it appears that under the executed pole attachment agreement between VPSC and Virginia Power, VPSC has obtained pole attachments for its facilities as a certificated interexchange carrier ("IXC").² Irrespective of VPSC's IXC certification, we are concerned that the pole attachment agreement between VPSC and Virginia Power must be approved by this Commission before it becomes effective, pursuant to § 56-77 of the Code of Virginia. Therefore, this Commission must determine whether such prior approval was effectively given in Case No. PUC960136, Order of August 8, 1997, as urged by VPSC, and if not, whether such affiliate contract should now be approved.

Therefore, the Commission concludes that VPSC should not act under or otherwise participate in or receive any benefits from the pole attachment agreement with Virginia Power until the Commission either determines that said executed pole attachment agreement does not require further approval, pursuant to the Order of August 8, 1997, in Case No. PUC960136, or makes a

² VPSC was granted interexchange authority in Case No. PUC960136 (Certificate No. TT-38A). In that consolidated case, the Commission also approved Virginia Power's Affiliate Services Agreement and Fiber Lease Agreement with VPSC pursuant to Chapter 4 of Title 56 of the Code of Virginia.

determination in a separate docketed proceeding that this affiliate contract should be approved.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) VPS Communications, Inc., is hereby granted a certificate of public convenience and necessity, No. T-457, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) VPS shall provide tariffs to the Division of Communications which conform with all applicable Commission rules and regulations.

(3) VPS is prohibited from acting under or participating in or receiving benefits from the pole attachment agreement with its parent, Virginia Power, until further order of the Commission, as described above.

(4) There being nothing further to come before the Commission, this case shall be dismissed and the papers placed in the file for ended causes.